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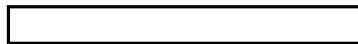
OGC 69-1142

18 June 1969

MEMORANDUM FOR: Office of Legislative Counsel

25X1A

ATTENTION:



SUBJECT: Suggested Statement of Agency Position
on Proposed Amendments to the Federal
Tort Claims Act

1. We are very much in favor of the proposed amendments to Title 28 of the United States Code which in effect will provide an exclusive remedy for any negligent or wrongful act or omission of an employee of the Government while acting within the scope of his employment. It should be noted that at the present time the Federal Tort Claims Act provides a similar exclusive remedy for Government drivers under 28 U.S.C.A. 2679(b), and for medical doctors working for the Veterans Administration's Department of Medicine per 38 U.S.C. § 4116. The cases which conceivably could involve the Agency would appear to be remote although the blanket coverage of an exclusive remedy is desirable. It should be borne in mind, however, that the Federal Tort Claims Act does not apply to claims arising outside the United States.

2. It is our opinion that section 3 of the proposed draft, which amends Title 28, U.S.C. 2679(d) and addresses itself to the remanding of a case back to the state court, should provide for an appellate review of the question of whether or not the employee's act or omission which gave rise to the suit was within the scope of his employment. I discussed this proposal with Mr. Stanley Rose of the Civil Division, Department of Justice, code 187-3357, who stated that consideration had not been given to including such appellate review in these proposed

OGC Has Reviewed

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CRC, 9/24/2003

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amendments to the Federal Tort Claims Act. However, the Department of Justice is currently working on a review of Chapter 89, Title 28, U. S. Code, District Courts; Removal of Cases from State Courts, which under subparagraph (d) of section 1447 specifically states that an order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise. Mr. Rose felt that there would be an eventual change in this removal procedure but had no objection to our mentioning this problem to the Bureau of the Budget in our answer to the proposed changes in the Federal Tort Claims Act.

3. It is suggested that the reply to the Bureau of the Budget include the following language, to be added as the last sentence of section 3 of the proposed bill: "Notwithstanding the limitations in Title 28, U.S.C. § 1447(d), the question of whether an employee was acting within the scope of his office or employment may be reviewed on appeal in accordance with Rule 3, Federal Rules of Appellate Procedure."

25X1A



Assistant General Counsel

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91ST CONGRESS
2D SESSION

S. 4112

IN THE SENATE OF THE UNITED STATES

JULY 23, 1970

Mr. TYDINGS introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To improve judicial machinery by amending title 28 of the
United States Code, to provide for the defense of suits against
Federal employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2679 (b) of title 28, United States Code, is
4 amended to read as follows:

5 “(b) The remedy against the United States provided
6 by sections 1346 (b) and 2672 of this title, or by alternative
7 benefits provided by the United States for injury or loss of
8 property or personal injury or death, caused by the negligent
9 or wrongful act or omission of any employee of the Gov-
10 ernment while acting within the scope of his office or em-

1 ployment, shall hereafter be exclusive of any other civil
2 action or proceeding arising out of or relating to the same
3 subject matter against the employee or his estate whose act
4 or omission gave rise to the claim, or against the estate
5 of such employee."

6 SEC. 2. Section 2676 (d) of title 28, United States Code,
7 is amended to read as follows:

8 "(d) Upon a certification by the Attorney General that
9 the defendant employee was acting within the scope of his
10 office or employment at the time of the incident out of which
11 the suit arose, any such civil action or proceeding commenced
12 in a State court shall be removed without bond at any time
13 before trial by the Attorney General to the district court of
14 the United States for the district and division embracing the
15 place wherein it is pending and the proceedings deemed a
16 tort action brought against the United States under the pro-
17 visions of this title and all references thereto. After removal
18 the United States shall have available all defenses to which
19 it would have been entitled if the action had originally been
20 commenced against the United States under the Federal Tort
21 Claims Act. Should a United States district court determine
22 on a hearing on a motion to remand held before a trial on the
23 merits that the employee whose act or omission gave rise to
24 the suit was not acting within the scope of his office or em-
25 ployment, the case shall be remanded to the State court."

1 SEC. 3. Section 2680 (h) of title 28, United States
2 Code, is amended to read as follows:

3 “(h) Any claim arising out of assault or battery (other
4 than assault or battery arising out of the performance of
5 medical, surgical, dental, or related functions, including the
6 conduct of clinical studies or investigations), false imprison-
7 ment, false arrest, malicious prosecution, abuse of process,
8 libel, slander, misrepresentation, deceit, or interference with
9 contract rights.

10 SEC. 4. Section 4116 of title 38, United States Code, is
11 repealed.

12 SEC. 5. This Act shall apply to all claims accruing on or
13 after the first day of the third month which begins following
14 the date of its enactment.

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91ST CONGRESS
2^D SESSION

S. 4112

A BILL

To improve judicial machinery by amending title 28 of the United States Code, to provide for the defense of suits against Federal employees, and for other purposes.

By Mr. TYDINGS

JULY 23, 1970

Read twice and referred to the Committee on the
Judiciary

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OLC 69-0522

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ACTION	DIRECT REPLY	PREPARE REPLY
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Assistant General Counsel 7D 01 HQ

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